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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,123	12/26/2001	Tomasz A. Matraszek	83836RLO	3425

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EXAMINER

CUNNINGHAM, GREGORY F

ART UNIT	PAPER NUMBER
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2676

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/036,123

Applicant(s)

MATRASZEK ET AL.

Examiner

Gregory F. Cunningham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 4-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                                 |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/26/2001</u> . | 6) <input type="checkbox"/> Other: _____                                                |

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### **DETAILED ACTION**

1. This action is responsive to communications of application received 12/26/2001.
2. The disposition of the claims is as follows: claims 1 - 22 are pending in the application. Claims 1, 4, 10, 13, 21 and 22 are independent claims.
3. The group and/or Art Unit location of your application has changed. To aid in the correlation of any papers for this application, all further correspondence should be directed to Group Art Unit 2676 (effective 11/05). Please be sure to use the most current art unit number on all correspondence to help us route your case and respond to you in a timely fashion.
4. When making claim amendments, the applicant is encouraged to consider the references in their entireties, including those portions that have not been cited by the examiner and their equivalents as they may most broadly and appropriately apply to any particular anticipated claim amendments.

### ***Election/Restrictions***

5. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-3, drawn to Method of arranging images based on affective information, classified in class 345, subclass 629, 649, 672.
  - II. Claims 4-9, 14, 15, drawn to Method of arranging images based on recorded affective information, classified in class 345, subclass 547, 555, 565, Foreign 107, 125, 131.

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- III. Claims 10-12, drawn to Method of arranging images based on recorded affective information in a format, classified in class 715, subclass 504, 517-521, 908.
- IV. Claims 13-20, drawn to Method of arranging images in sizes, classified in class 345, subclass 660, Class 358, subclass 1.2, 528 and Foreign 143.
- V. Claim 21 (Combination), drawn to Method of retrieving and arranging images in sizes, classified in class 369, subclass 125, Class 382, subclass 159.
- VI. Claim 22 (Subcombination), drawn to Method of retrieving and arranging images in sizes, classified in class 369, subclass 125, Class 382, subclass 159.

The inventions are distinct, each from the other because of the following reasons:

They have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II – VI, the search required for Group II is not required for Groups III – VI, and the search required for Group IV is not required for Groups V – VI, restriction for examination purposes as indicated is proper.

During a telephone conversation with Raymond Owens (Registration Number 22,363) on 11/16/2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-3. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. Regarding claim 1, the phrase "such" implicitly equivalent to "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-3 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

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A. Claim 1 is anticipated by a mental process augmented by pencil and paper markings [as detailed] below.

“A method of arranging a plurality of visual images in an album, based on affective information which classifies such images, comprising the steps of:

a) providing affective information to classify at least one digital image from a plurality of stored digital images [anticipated by a mental process whereby a person mentally or mindfully categorizes (finds favor or delight in) a favorite or endearing view of a digital image];

b) using the affective information to determine the importance of the at least one digital image [anticipated by a mental process whereby a person mentally or mindfully associates an importance from the favored or delightfully endearing view of said digital image]; and

c) producing an album including visual images of the plurality of stored digital images, wherein the importance of the at least one digital image is used to arrange the visual images [is anticipated by a mental process augmented by pencil and paper markings whereby a person draws a collection of pictures or sketches from viewing said digital image(s) and arranged the pictures or sketched according to the associated importance from the favored or delightfully endearing view of at least one digital image from a plurality of stored digital images]”.

B. Claims 2 and 3 are anticipated by a mental process augmented by pencil and paper markings also since the larger size and prominent location are at the discretion of the person drawing a collection of pictures with associated important favorites as viewed of at least one digital image from a plurality of stored digital images.

*Claim Rejections - 35 USC § 102*

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by FotoFile: A Consumer Multimedia Organization and Retrieval System, hereinafter FotoFile.

A. FotoFile discloses claim 1, “A method of arranging a plurality of visual images in an album, based on affective information which classifies such images [p. 497, 2<sup>nd</sup> col. at ‘FotoFile, shown in Figure 1, is an application for organizing and managing consumer digital media, such as photos and audio/video recordings. It illustrates a number of aspects of our hybrid approach; and p. 498, 1<sup>st</sup> col. at ‘The central pane is an Image Palette, which provides functionality analogous to a light table. The user can arrange, delete, and display media objects at different resolutions in the Image Palette. The palette is also used to display search results and newly imported materials, and it also serves as a temporary storage area for creating albums. The rightmost pane is an Album Editor that provides tools for composition of digital albums, which can then be “played back” or sent electronically to others. In order to match the user’s expectations for how pictures are arranged, FotoFile uses a photo album as the primary organizational metaphor. A photo album is a metaphor with which people can quickly relate when thinking about organizing photos, and therefore the mental model relies on user intuition rather than explicit instruction. In FotoFile, an Album is a persistent collection of media objects,

which are arranged on “pages”. Each image is also accompanied by annotations, which can be in the form of text, audio, or video.’], comprising the steps of:

a) providing affective information to classify at least one digital image from a plurality of stored digital images[p. 498, 1<sup>st</sup> col. at ‘Users can assign arbitrary values within the defined metadata types, e.g. annotating the location of a photo as “Grand Canyon”. Another pre-defined metadata attribute, called favorite, can be used to tag certain images as the “best” images in a collection, e.g. my favorite photos from the Grand Canyon vacation.’];

b) using the affective information to determine the importance of the at least one digital image [supra, at ‘can be used to tag certain images as the “best” images in a collection’; and on p. 502, 2<sup>nd</sup> col. at ‘The degree to which consumers will perform annotation if the benefits are significant and meaningful.’]; and

c) producing an album including visual images of the plurality of stored digital images [p. 498, 1<sup>st</sup> col. at ‘In order to match the user’s expectations for how pictures are arranged, FotoFile uses a photo album as the primary organizational metaphor. A photo album is a metaphor with which people can quickly relate when thinking about organizing photos, and therefore the mental model relies on user intuition rather than explicit instruction. In FotoFile, an Album is a persistent collection of media objects, which are arranged on “pages”. Each image is also accompanied by annotations, which can be in the form of text, audio, or video.’], wherein the importance of the at least one digital image is used to arrange the visual images [p. 498, 1<sup>st</sup> col. at the user can assign a representative image for the album cover to aid in selection from a list.’]” [as detailed].

B. Claim 2, “The method of claim 1 wherein images determined to be important are printed using a larger size [p. 498-499 at ‘These segments can be reused in different situations and



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combined in different ways, depending upon the interaction between storyteller and audience.

The model of usage is of two or more people sitting together by a computer, much in the same way that people sit together and go through photo albums. An alternative model of usage is one wherein the storyteller shares groupings of photos and annotations over the Internet.

Building on the metaphor of a scrapbook, we call these small groupings of photos scraplets (shown in Figure 2). ” A scraplet can be assigned a name and other properties, thus providing annotation for a grouping that can be useful in retrieving the grouping at a later time. We believe that such grouping and lightweight annotating will fit naturally within the activity of preparing a story, thus providing a more enjoyable mechanism for eliciting metadata from consumers.]” is disclosed by FotoFile [as detailed].

C. Claim 3, “The method of claim 1 wherein images determined to be important are printed in a prominent location in the album [p. 498, 1<sup>st</sup> col. at ‘Furthermore, in order to simplify album retrieval, the user can assign a representative image for the album cover to aid in selection from a list. Having a cover image that is representative of the album in the user’s mind enables fast visual recognition, rather than relying on information recall.]” is disclosed by FotoFile [as detailed].

12. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by FlipAlbum 3.0 or, in the alternative, under 35 U.S.C. 103(a) as obvious over FlipAlbum 3.0 and in view of Roger’s II The New Thesaurus.

A. FlipAlbum 3.0 discloses claim 1, “A method of arranging a plurality of visual images in an album, based on affective information which classifies such images [You can even bookmark your favorite pictures for quick reference.], comprising the steps of: a) providing affective

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information to classify at least one digital image from a plurality of stored digital images; b) using the affective information to determine the importance of the at least one digital image [favorite pictures]; and c) producing an album including visual images of the plurality of stored digital images [FlipAlbum 3.0], wherein the importance of the at least one digital image is used to arrange the visual images [FlipAlbum 3.0]" [as detailed].

In as much as FlipAlbum 3.0 discloses the importance of favorite pictures, gives for "favorite" – One liked or preferred above all others: darling, pet. Idiom: apple of one's eye.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the digital photo album disclosed by FlipAlbum 3.0 in combination with favorite One(s) liked or preferred above all others disclosed by , and motivated to combine the teachings because it would find the image you need fast and easy as revealed by FlipAlbum 3.0.

B. Claim 2, "The method of claim 1 wherein images determined to be important are printed using a larger size ['Not only can you flip through the images, you can annotate them, play music of your choice while you're viewing them, resize the album, launch multiple albums, print any image, email an image, and create slide show presentations.' and 'WYSIWYG printing']" is disclosed [as detailed].

C. Claim 3, "The method of claim 1 wherein images determined to be important are printed in a prominent location in the album [['Not only can you flip through the images, you can annotate them, play music of your choice while you're viewing them, resize the album, launch multiple albums, print any image, email an image, and create slide show presentations.' and

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‘WYSIWYG printing’]” is disclosed [as detailed].

*Responses*


14. Responses to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

*Inquiries*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory F. Cunningham whose telephone number is (571) 272-7784.


If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Matthew Bella can be reached on (571) 272-7778. The Central FAX Number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gregory F. Cunningham  
Examiner  
Art Unit 2676

gfc

11/18/2005

  
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